


8/12/21

<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-48/OA/2020

DIN : 20211064WT0000995915

आदेश की तारीख / Date of Order : 27.10.2021

जारी करने की तारीख / Date of Issue : 27.10.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-26/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

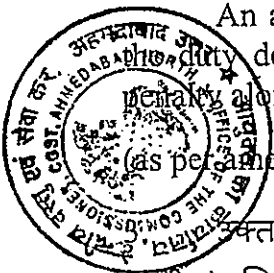
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty or duty and penalty are in dispute, or penalty, where one is in dispute.

(as per Amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

अनुपस्थित अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



BRIEF FACTS OF THE CASE:

M/s Bijapur Hungad Tollway Pvt Ltd., Sadbhav House, Opp. Law Garden Police Chowky, Ellisbridge, Ahmedabad-380009 (hereinafter referred to as "the assessee" for the sake of brevity) are engaged in providing taxable services and are having Service Tax Registration No. AADCR5807LST001.

2. The Third Party Data of Sales/ Gross Receipt from Services (Value from ITR) in respect of the assessee were shared by CBDT with CBIC. The data so received was found to be not tallying with Gross value of Service provided as per ST-3 Returns filed by the Assessee for FY 2014-15. The difference in value was observed to be Rs. 1,04,33,88,204/- in the instant case. Therefore, it appeared that the assessee had declared less taxable value in their ST-3 Returns and accordingly the assessee had short paid / not paid service tax of Rs. 12,89,62,782/- (inclusive of cess) on the differential value of Rs. 1,04,33,88,204/- for FY 2014-15 as detailed below.

(Amount in Rs.)

Sr.No.	F.Y.	Value as per B/S, P&L, Form 26AS, ITR	Value Declared in ST-3 Returns	Value Difference in ITR and STR	Resultant service tax short paid (including Cess)
1	2014-15	1,04,33,88,204	0	1,04,33,88,204	12,89,62,782

3. The assessee was requested vide letter dated 12.02.2018 followed by reminders 03.05.2018, 30.07.2019 and 13.07.2020 to explain the difference in value by submitting the self certified documentary evidences such as Audited Balance Sheet, Profit and Loss Account, IT Returns, Form 26AS, ST-3 Returns and ledgers for FY 2014-15, but the assessee neither produced any documentary evidences nor submitted any reply.

4. The CBDT had not shared data for FY 2015-16, FY 2016-17 and 2017-18 (upto June 2017) till the issuance of the subject SCN, hence, the service tax liability could not be ascertained for FY 2015-16 to FY 2017-18 (upto June 17). However, if any other amount was to be disclosed by the Income tax Department or any other agencies, the tax liability arising on account of this in future was to be covered under the subject SCN and was to be recoverable from the assessee under the proviso to Section 73(1) of the Finance Act, 1944 ("the Act") read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017.

5. It is pertinent to mention here that the government has from the very beginning placed full trust on the service provider so far as service tax is



concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appeared to have made deliberate efforts to suppress the value of taxable service to the department and appeared to have not paid the liable service tax in utter disregard to the requirements of law and the trust reposed in them. Such outright act in defiance of law, appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

6. In light of the facts discussed hereinabove and materials evidences available on records, it was revealed that the assessee had contravened the following provisions of Chapter-V of the Finance Act, 1944 and Rules made there under:

- (i) Section 66B and 68 of the Act read with Rule 2 & 6 of Service Tax Rules 1994 in as much as they had failed to pay service tax correctly at the appropriate rate.
- (ii) Section 67 of the Act in as much as they had failed to determine the correct value of taxable service provided by them.
- (iii) Section 70 of the Act read with Rules 6 & 7 of the Service Tax Rules, 1994, in as much as they had failed to declare correct value, assess and pay the service tax due on the taxable value of services provided by them and to maintain records and furnish returns in ST-3 Returns and in such manner and

to frequency.



(iv) Section 77 of the Act in as much as they had failed to file correct and true ST-3 Returns.

7. It also appeared that all the acts of contravention on the part of the service provider had been committed by way of suppression of the facts by not declaring / not considering the correct value of taxable service provided by them for payment of service tax to the Central Government for the period in question, with an intent to evade payment of service tax and therefore the service tax not paid at the material time was required to be demanded/recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years read with Notification dated 27.06.2020 issued vide F.No. CBEC-20/06/08/2020-GST, along with interest as per the provision of Section 75 of the said Act.

8. It was noticed that at no point of time, the said assessee had disclosed or intimated to the Department regarding receipt/providing of Service of the differential value that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2014-15. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 12,89,62,782/- (including cess). Thus, it appeared that the above act of omission on the part of the assessee resulted into non payment of service tax on account of suppression of material facts and contravention of provisions of the Act with an intent to evade payment of service tax to the extent of Rs. Rs. 12,89,62,782/- (including cess). Hence, the same appeared to be recoverable from them under the proviso to Section 73(1) of the Act read alongwith applicable interest under Section 75 of the Act. The above acts of omission/commission on the part of the assessee rendered the assessee liable to penalty under Section 78 of the Act.

09. Therefore, a Show Cause Notice No.STC/15-48/OA/2020 dated 28.09.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s Bijapur- Hungad Tollway Pvt Ltd., Sadbhav House, Opp. Law Garden Police Chowky, Ellisbridge, Ahmedabad-380009, asking them to show cause as to why;



- i. Demand of Service Tax to the extent of Rs. 12,89,62,782/- (Rupees Twelve Crore Eighty Nine Lakhs Sixty Two Thousand Seven Hundred Eighty Two only) short paid /not paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- ii. Service Tax liability not paid during the financial year 2015-16, to 2017-18 (upto June 2017) ascertained in future, should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994;
- iii. Interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994;
- iv. penalty should not be imposed upon them under the provisions of Section 77(1) and 77(2) of the Finance Act, 1994;
- v. penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

10. The assessee vide letter dated 27.09.2021 forwarded their written submission, wherein they stated that they are a company specially incorporated for construction and maintenance of Road; that they had constructed a road from Bijapur to Hungad for which they were having toll collection and maintenance rights awarded by NHAI (Ministry of Road and Transport); that their major income was from toll collection which is not taxable as per Section 66D(h) of Finance Act, 1994; that they were paying service tax under reverse charge mechanism. They also submitted the copies of the documents viz. Concession Agreement, ST-3 Returns for FY 2014-15 alongwith reply, Auditors' Report for FY 2014-15, Copy of Form 26AS for FY 2014-15 and Income Tax Returns FY 2014-15. They also provided copy of Independent Auditors Report for FY 2015-16 and FY 2016-17.

PERSONAL HEARING

11. The assessee was granted personal hearing on 05.10.2021 to present their case. Shri Kapil Bokadia, Chartered Accountant and Shri Umesh Dani appeared for personal hearing on behalf of the assessee, wherein, they reiterated the contention/ arguments raised by them in their written submission. Briefly stated they submitted that their income had been



generated from toll collection which is exempt from the purview of service tax. They requested to drop the proceedings initiated against them.

DISCUSSION AND FINDINGS:

12. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 27.09.2021, documents submitted and oral submission made by the assessee during the personal hearing .

13. On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2014-15, which was then compared with the gross value declared in ST-3 Returns filed for FY 2014-15 by the assessee. The difference in value of service to the extent of Rs. 1,04,33,88,204/- was noticed by the department and therefore, the subject SCN was issued. Apart from the difference noticed ST-3 Returns vis-a-vis the ITR, the SCN had not relied on any other evidence or investigation. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 1,04,33,88,204/- under proviso to section 73(1) of Finance Act, 1944 or not.

14. Accordingly, first and foremost I feel it is of utmost importance to understand the activities being carried out by the assessee. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative list or which is exempt by virtue of mega exemption.

15. I find that the assessee in his defence reply dated 27.09.2021 has stated that their major income is from toll collection which is not taxable as per Section 66D(h) of the Finance Act, 1994. It is true that the activities of collection of toll charges for providing access to a road by an assessee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard.

16. In order to comprehend the actual nature of service provided by the assessee, I would like to take support of the following documents which have been submitted along with their aforementioned defence reply dated



27.09.2021. I would also like to discuss and reproduce the relevant excerpt of the documents.

16.1 The assessee has submitted the Independent Auditors' Reports for FY 2014-15, 2015-16 and 2016-17. It can be discerned from the Auditors' report that the assessee is a company registered under the Company Act, 1956. An Independent Auditor is appointed by the Company under Section 139 of the Company Act. The auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and report on every financial statements which are required by this Act to be laid before the company in general meeting. The report shall after taking into account, the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, give a true and fair view of the state of the company's affairs at the end of the financial year incorporating the profit or loss and cash flow for the year and such other matters as may be prescribed.

I also find that the Financial statement notes are the supplemental notes that are included with the published financial statements of a company. The notes are used to explain the assumptions used to prepare the numbers in the financial statements, as well as the accounting policies adopted by the company. They help different types of users, such as financial analysts and investors, to interpret all the numbers added in the financial statements. Therefore, notes to the financial statements are very important to ascertain the activity of the company or source of income.

"Overview of the Company" pertaining to the assessee as provided under the "Notes on accounts forming part of Financial Statements" for FY 2014-15 is reproduced hereinbelow:

"Overview of the Company:

Bijapur-Hungad Tollway Private Limited (" the Company") was incorporated as a Special Purpose Vehicle (SPV) in February, 2010, for the purpose of four laning of Bijapur- Hungad section of NH-13 from KM 102 to KM 202 in the state of Karnataka on Design, Built, Finance, Operate and Transfer (DBFOT) Toll basis. The company has entered into Concession Agreement with National Highway Authority of India (NHAI) with a Concession Period of 20 years including

construction period of 910 days. The Company has obtained completion certificate on 20th June 2012 from the National Highway Authority of India.

Notes No. 1.6 provides "Revenue Recognition" which is reproduced below:

Revenue is recognized to the extent that it is probable that the economic benefits will flow to the company and the revenue can be reliably measured.

(i) *Income from toll operations:*

The revenue is recognized as and when the traffic passes through toll plazas.

.....

(iv) *Rent Income:*

Rent Income from the rest area is recognized on accrual basis."

I find similar notes in the auditors' report for F.Y 2015-16 and FY 2016-17 pertaining to the assessee.

16.2 I find that the aforementioned records are prepared in a statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and they can also call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are maintained in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income of the assessee to be true and fair.

16.3 It is observed from the Concession Agreement dated 09.03.2010 entered by the assessee with National Highway Authority of India that as per article 3.1 of the agreement, the assessee had been granted exclusive right, licence and authority to construct, operate and maintain the project (the Concession i.e. Four Laning of Bijapur-Hungad Highway Section of NH-13 from KM 102 to KM 202) for a period of 20 years from the date of agreement.



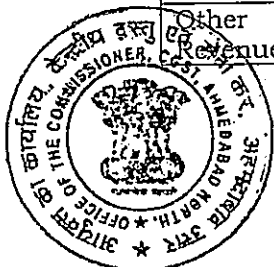
Further, as per Article 3.1.2(d), the concession had been granted to the assessee to demand, collect and appropriate Fee from vehicles and users liable for payment of Fee for using the Project Highway or any Part thereof and refuse entry of any vehicle if the Fee due is not paid.

16.4. Having considered these factual and documentary evidence on records, I am now able to conclude that the main source of income/revenue of the assessee is from the toll collection, which is collected from the users for allowing the use of road and other operating income appeared to be from Rent Income for renting of the rest area.

16.5 I find that the SCN shows the difference in value to the tune of Rs. 1,04,33,88,204/- for FY 2014-15 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further, the SCN also demands the levy of service tax for FY 2015-16, FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee. Action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. However no information on the subject matter pertaining to the assessee has been received from CBDT. As already mentioned before, apart from the differences noticed in the figures reported in ST-3 returns and in ITR, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations. The assessee had also stated that they were paying service tax under RCM, for being the recipient of services of Legal services, Manpower Service and Rent-a-Cab service, wherein they were required to pay Service Tax under the Act.

16.6 The details of Revenue from the operation booked by the assessee as per Profit and Loss Account, during FY 2014-15, 2015-16, and 2016-17 are tabulated as under. The main source of the incomes is observed to be from Toll Collection.

Revenue from operations (Rs. In Million)				
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 (upto June 17)
Revenue from Toll Collection	1043.39	1147.47	1158.49	Not provided by the assessee
Other Operating Revenue (Rent Income)	0.12	0.18	0.27	



It is observed from comparing the data provided in the SCN and P&L account for FY 2014-15, that the SCN has pointed the out the difference in value without considering the other operating revenue which however is quite miniscule or negligible. I, therefore, refrain from the discussing the taxability on other operating revenue.

16.7 I find that the assessee has contested the demand of service tax on services being "exempt service" as the service rendered by them is covered at Sr. No. (h) under the services specified in negative list provided under Section 66D of the Act. I also find that the section 66B of the Act provides levy of service tax on the value of all services, other than those services specified in the negative list. The said Sr. No. (h) of Section 66D of the Act is reproduced hereinunder:

"66D. The negative list shall comprise of the following services, namely:-

(a).....

(h) Service by way of access to a road or a bridge on payment of toll charges;"

A plain reading of the above legal position makes it abundantly clear that the activity of toll collection from the users for allowing the use of the road, is covered under the service specified at Sr. No. (h) of Section 66D of the Act i.e. Service by way of access to a road on payment of toll charges.

17. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the services specified under negative list provided under Sr.No. (h) of section 66D of the Act and I hold that the exemption is quite clearly available to the assessee as claimed by them. Since I am in total agreement with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

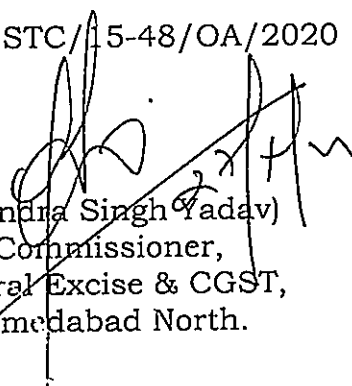
18. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the exempt service rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. I therefore hold that no service tax is payable by assessee as demanded in the subject SCN.



19. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law. Accordingly I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s Bijapur Hungad Tollway Pvt Ltd., Sadbhav House, Opp. Law Garden Police Chowky, Ellisbridge, Ahmedabad-380009, vide Show Cause Notice F.No. STC/15-48/OA/2020 dated 28.09.2020.


 (Upendra Singh Yadav)
 Commissioner,
 Central Excise & CGST,
 Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-48/OA/2020

Date: .10.2021

To,
 M/s BijapurHungad Tollway Pvt Ltd.,
 Sadbhav House,
 Opp. Law Garden Police Chowky,
 Ellisbridge, Ahmedabad-380009

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File

